

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 58th LEGISLATURE - REGULAR SESSION

COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND TELECOMMUNICATIONS

Call to Order: By **CHAIRMAN ROD BITNEY**, on January 20, 2003 at
3:00 P.M., in Room 455 Capitol.

ROLL CALL

Members Present:

Rep. Rod Bitney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Alan Olson, Vice Chairman (R)
Rep. Dee Brown (R)
Rep. Eileen J. Carney (D)
Rep. Hal Jacobson (D)
Rep. Scott Mendenhall (R)
Rep. John Parker (D)
Rep. Diane Rice (R)
Rep. Brennan Ryan (D)
Rep. Jim Shockley (R)

Members Excused: None.

Members Absent: Rep. Tim Dowell (D)
Rep. Daniel Fuchs (R)
Rep. Jeff Laszloffy (R)

Note: **Representatives Dowell, Fuchs, and Laszloffy** arrived during the hearing some time after the roll was taken.

Staff Present: Glenna McClure, Committee Secretary
Mary Vandembosch, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.
Time stamp in noted prior to testimony or action.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 27, 1/16/2003; HB 303,
1/16/2003; HB 304, 1/16/2003
Executive Action: None

HEARING ON HB 27

Sponsor: REPRESENTATIVE NORMA BIXBY, HD 5

Opening Statement by Sponsor:

{Tape: 1; Side: A; Approx. Time Counter: 1.7 - 13.1}

REP. NORMA BIXBY, said that HB 27 would establish an act to require the Department of Corrections to provide for at least one person who is knowledgeable and experienced in traditional American Indian religious practices available to the state institutions systems. She indicated that American Indians in the prison systems need spiritual support. She said that she is not only carrying this bill on behalf of the American Indians who are incarcerated in the correctional institutions, but also on behalf of the Interim Committee on Tribal State Relations. American Indians are the only people in this nation who require federal legislation to practice their religion.

All other people have the right to practice their religion without federal legislation. There must be an understanding between cultures. Indians have a rich oral history that is handed down from generation to generation. Ceremonies are not written, but practiced. Just as other religions have priests, ministers, and rabbis, the American Indians have spiritual leaders. For years the Indian ceremonies were practiced underground. Many were persecuted when they practiced their ceremonies. Although there are some ceremonial practices occurring in correctional institutions, there is some indication of discrimination. She provided a copy of some minutes of the Prayer Warrior Society that indicate some of the discriminations that were occurring in the prison.

EXHIBIT (feh11a01)

The elders who are prisoners are restricted in what they can do for other inmates. They cannot train non-Indians in the handling of ceremonial artifacts, therefore they cannot be assured that the artifacts are handled properly. She distributed a fact sheet on the demographics of prison population.

EXHIBIT (feh11a02)

Because there is such discrimination against American Indians in the prisons, many Indians refrain from identifying themselves as Indians. But as Indian prisoners are allowed to practice their religion, this may change. It is important that an Indian be

hired by the institutions. She then introduced Nancy Knight who was hired as a Native American liaison for the correctional system. She also introduced Mr. Slaughter of the Department of Corrections. She distributed the six-month report on Native American Indian Issues.

EXHIBIT (feh11a03)

Proponents' Testimony:

{Tape: 1; Side: A; Approx. Time Counter: 13.1 - Tape: 1; Side B; 7.0}

Brad Martin, Executive Director, Montana Democratic Party, and resident of Helena, said that a path to profound change in a person's life is often guided by a person's belief in a higher power, a spiritual force or religion. We live in a country and a state united and built on a firm law of respect for different faiths to guide our people in their daily lives and in times of crisis. Montana has a disproportionate number of Native American people in the correctional system. He asked that the committee respect the redemptive role that Native American spiritual leaders could have in the role of inmates' lives.

Betty Whiting, Montana Association of Churches, urged the committee to pass HB 27. Her organization feels that there are many injustices to the American Indians, one being their lack of spiritual leaders in the correctional system. There is a study that indicates that prisoners who have some religious exposure have a much lower rate of returning to prison than those who have no religious exposure.

Toni Plummer-Alvernez, concerned tribal member, said that she is here in support of HB 27. She indicated that those who do find a way out of the prison system, it is usually because someone was there, while they were locked up, to help them.

Gene Fenderson, representing the Progressive Labor Caucus, said that he is in support of HB 27 and asked that the committee give the bill a positive do pass.

Laurie SunChild, concerned tribal member, said that since praying is her God-given right, it should also be so for those Indians in prison. She feels that if this bill is passed it may serve to help in the rehabilitative process for Indian inmates. She asked for the committee's vote in favor of this bill.

Pauline Small, concerned trial member, said that her daughter is a representative of HD 6. She said that the Christian religion was more or less forced upon them. They already had their religion. God didn't come on the Mayflower. She went over how the Mayflower brought many things to the people here, such as the Bible, alcohol, drugs, and guns. She reiterated that the Indian religion was handed down from generation to generation and was still practiced. Although she was raised Catholic, she still practices the religion of her childhood. She felt that this bill would be instrumental in inmates being helped to practice the religion that they were taught as children.

Informational Testimony:

Gilda Clancy, Eagle Forum, (a national grass-roots organization that stands for pro-life and pro-family values), said that she does not stand as an opponent or proponent of this bill. She conducts Bible seminars at the women's prison. Many Native American women attend her Bible seminars which she conducts as a volunteer. She also indicated that there is a disproportionate number of Indian Women in the prison and she has a great compassion for them.

Nancy Knight, Native American Liaison and Grants Coordinator, Department of Corrections, said that she has met with Native American Inmates and Tribal Council and they have worked on a feasibility study for a prerelease center on a reservation. There are 22 different religions practiced in the prison. Native American spirituality is a tradition that is passed on, and therefore, is difficult for the Department of Corrections to deal with because there is no Bible or written form for reference. They cannot pick up a book to see if the traditions and ceremonies are being practiced correctly and with respect. Some progress in this area is the fact that the requirements for the Religious Coordinator have been changed. A Master's degree in Theology is no longer required for the Religious Coordinator position. There is a sweat lodge at all of the facilities and inmates are able to sweat weekly. There is a requirement in some cities, however, to acquire a burning permit when the lodge is used.

Questions from Committee Members and Responses:

{Tape: 1; Side: B; Approx. Time Counter: 7.1 -26.7}

REP. BROWN asked the sponsor to clarify the politically correct term, "is it Indian, is it Native American, is it either, sometimes is it neither?"

REP. BIXBY indicated that in the education community, they have selected the term American Indian. The State of Montana still has a lot of documents that say Native American which usually represents Indian people.

REP. BROWN asked if the American Indian religions were similar enough to have only one representative through the Department of Corrections, or if there would be a need to hire more staff to accommodate the differences in the American Indian population religions.

REP. BIXBY said that they could come to some consensus as to what they would use for their ceremonies. When a ceremony is performed it is respected by other tribes.

REP. BROWN asked if there should be a change to line 14 to read American Indian rather than Native American traditionalist.

REP. BIXBY said that it was not something that was discussed.

REP. DOWELL asked what kind of religious support exists currently in the prison.

Nancy Knight said that there is a full-time religious activities coordinator at Montana State Prison (MSP) and two half-time religious coordinators. Their position is not specific to any religion, however, one is a Lutheran minister, one is a Methodist minister and one is a Catholic Priest. Although they have stronger ties to those religions, they are there for the whole population and they provide for a sweat ceremony weekly.

REP. LASZLOFFY asked if Ms. Knight had said there were currently 26 different religions practices in the prisons.

Nancy Knight said that there were actually 22 different religions being practiced.

REP. LASZLOFFY asked if there was currently one full-time and two part-time religious coordinators, and volunteers specific to each religious practice.

Nancy Knight indicated that was true. There are many volunteers for some of the religions, however, there is not a strong volunteer group through the Native Americans to meet their spiritual needs.

REP. LASZLOFFY asked if the reason for a lack of volunteer group is the fact that there hasn't been much effort to find them or if volunteers have not come forward.

Nancy Knight indicated that it is a combination of both.

REP. MATTHEWS indicated that he was involved in the practice of a sweat and asked if this would change the policy regarding religious articles.

Nancy Knight said that it would not change the current policy. The policy addresses the use of certain articles in religious ceremonies.

REP. JACOBSON asked what the concerns were pertaining to not having the Native American religion proceedings in writings.

Nancy Knight answered that they can refer to a book, such as a Bible or book of Koran, for other religions and specific denominations. The difficulty in helping with Native American ceremonies is that the Indians practice ceremonies specific to the clan in which they belong. In the correctional system it is important to know exactly what is needed for ceremonies in order to prepare the proper security and safety precautions. There isn't a book to look up the proper procedures or a directory of Indian religious leaders to call for direction.

REP. LASZLOFFY asked if they intend for this to be a paid position or would it be a volunteer position.

REP. BIXBY said that she understood that there was a half-time position already budgeted.

REP. LASZLOFFY asked if the half-time position is one of the two half-time positions already filled.

REP. BIXBY said that there was budget for a half-time position and they wanted to fill the position with a spiritual person.

REP. MENDENHALL asked, in reference to Ms. Plummer-Alvarez's testimony, if there have been changes over the past years. It sounded as though her husband was able to take advantage of spiritual leadership when he was in prison.

REP. BIXBY indicated that she wasn't sure of the timing of his incarceration or if they were practicing at that time.

CHAIRMAN BITNEY asked how this issue had been dealt with in other states and federally.

Nancy Knight indicated that the Federal Bureau of Prisons has a fundamental spirituality program for Native American religions. Other states are struggling with this issue also.

Closing by Sponsor:

{Tape: 1; Side: B; Approx. Time Counter: 26.7 - Tape:2; Side: A; 4.7}

REP. BIXBY indicated that it is an important issue in the lives of the inmates. It helps them to put religion back into their lives which helps them when they are out of prison. Since there is no book to refer to for Indian religions or ceremonies, it is important to have someone on staff who understands the significance of the ceremonies and religious articles. She asked that the committee recommend that the bill do pass.

HEARING ON HB 303

Sponsor: REPRESENTATIVE ALAN OLSON, HD 8

Opening Statement by Sponsor:

{Tape: 2; Side: A; Approx. Time Counter: 4.9 - 8.1}

REP. OLSON explained that the bill is an act modifying the definition of facility under the Montana Major Facility Siting Act (MFSA) as it relates to transmission lines. On the second page of the bill, the changes are on line 17, 18, and 19. The changes do significant streamlining. It would encourage business development in Montana which will add to the economic well-being of the state.

Proponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 8.1 - 16.7}

Russ Ritter, Montanans for Reasonable Economic Electrical Development, explained his group is a grassroots organization that has been created to try to develop energy throughout the eastern part of the state of Montana where much of the coal reserves exist. It is important to create an economy based on natural resources. If Montana had the ability to move more electricity, it could not be moved because of the surrounding

states. This bill will provide the first step in solving the problem.

Steve Wade, Attorney, Helena, said that he was testifying on behalf of the Bull Mountain Development (project sponsor for the Roundup Power Project), and Great Northern Properties. He said that it is redundant to require a project to require review under the MFSA when power lines are already addressed in the Environmental Impact State (EIS). The Roundup project has had impacts evaluated under the EIS. The bill would allow projects to move forward without unneeded regulatory processes.

Jim Mockler, Montana Coal Council, said that last session much of the MFSA was repealed other than power and gas lines. Gas and power lines were left for a reason. There would be uniformity of lines were to go across the state. It was not meant for short connecting lines. The short lines are addressed in the EIS on the power plant. They will not escape review.

Bob Pavlovich, I.B.E.W.-233, Butte, said that this bill will create good paying jobs. He indicated that Butte has a pit that is shut down because of lack of electricity that has cost 330 jobs. This bill would help provide the electricity necessary to create jobs.

Jerry Driscoll, AFL-CIO, said that if we do not start building transmission lines and facilities by 2007 there will be an unregulated monopoly. With the present law it adds costs because of the additional review through the MFSA.

Willie Duffield, Assistant Director, Montana Association of Oil, Gas and Coal Counties, said that he supports HB 303 and believes it is a great step in encouraging development in the state.

Opponents' Testimony:

{Tape: 2; Side: A; Approx. Time Counter: 16.7 - Side B; 6.9}

Patrick Judge, Montana Environmental Information Center (MEIC), said that the MFSA was passed in the mid 1970's to regulate the location of power plants, pipelines, transmission lines. It required that such structures be certified as to environmental compatibility and public need. Structures have to obtain a certificate of environmental compatibility. The exemption proposed by HB 303 is focused on the transmission lines from the facility to where they tie into the grid. The Roundup project is requesting a 160 KV line which is unusual for the amount of power that will be transmitted across that line. It is the opinion of

the MEIC that the only benefit was that they could escape review under the Siting Act by avoiding the 240 kilovolt trigger. This bill would further weaken the laws protecting the environment.

Matthew Leow, Montana Public Interest Research Group (MontPIRG), said that he is in opposition of this bill. He indicated that the importance of MFSA is for public participation in the process of approving the construction of transmission lines.

Sherm Janke, Montana Chapter, Sierra Club, said that he questions how unfettered transmission lines cannot be considered a major facility. Montana resources in Butte went down because of electrical utility deregulation; the cost went up and they had to go out of business for that reason. The main objection to the bill is that it represents one more cut to the original act.

Michelle Reinhart, Northern Plains Resource Council, said that Northern Plains stands in opposition to the bill. Members of the Council were instrumental in getting the MFSA passed in 1973. The siting act provided Montanans with some control over major energy production facilities and the pipelines and transmission lines that come with the facilities. Property owners were given the opportunity to participate in the decisions to run transmission lines through their land. Development can be done responsibly. Northern Plains urges the committee to kill this bill.

Questions from Committee Members and Responses:

{Tape: 2; Side: B; Approx. Time Counter: 6.8 - Tape: 3; Side A; 2.9}

REP. SHOCKLEY asked Mr. Wade if a 161 KV line would fit within the currently existing statute if 75% of the landowners agreed to the easement and if that was the problem. He referenced page two, line 13, (ii) of the bill.

Steve Wade said that specifically for the Roundup Power Project, if the project is permitted, it is the plan of the sponsor to acquire the right-of-way from a railroad that is going to be built. It seems ridiculous to be reviewed again.

REP. SHOCKLEY asked that if they have the right-of-way, wouldn't they fit the existing statutes and really don't need this amendment.

Steve Wade said that this is true, although it creates options for some problems that they have had. It should be up to the

project to decide what transmission volts they should go under. The Roundup project is excluded from the MFSA because it is under 161.

REP. SHOCKLEY said that it appears that these land owners are about to be subject to imminent domain proceedings because they haven't agreed to give the right-of-way. He asked Mr. Wade if that was true.

Steve Wade said that wasn't the case.

REP. SHOCKLEY asked how long the line was going to be.

Steve Wade said that the Roundup line was about 32 miles. A project could be excluded if it were a 230 line if it were under 10 miles.

REP. CARNEY asked how long it would take to built the lines after given the authority.

REP. OLSON said, "two years."

REP. CARNEY asked that, if the power starts here, wouldn't a lot of capacity be lost by the time it goes to California.

REP. OLSON said that this wouldn't apply to the Roundup project but went on to explain that the electrical grid in the country is like a series of water pipes. Water or electricity put into the system here and those particular electrons may not come out in California. The power may gain capacity on the grid.

REP. CARNEY said that her concern is if this is like buying a computer. Shortly after buying a computer it is outdated. She asked if dinosaurs are being built, since fuel cells are being introduced that don't need lines.

REP. OLSON said that fuel cells are not reliable yet. This bill allows a need to be filled until fuel cells are more available and reliable.

REP. CARNEY asked if the farmers and ranchers have a cause to worry about high power transmission lines going over their property.

REP. OLSON said that she is probably referring to electromagnetic fields. The lines used would most likely be 230 KV lines which is unlike the big bundles of lines that go from Colstrip. The

lines affected are the lines from the generator to the grid to a substation.

REP. JACOBSON said that his question was similar to REP. SHOCKLEY'S question that referred to page two, lines 13-16. These lines address some basic property concerns. He asked for further clarification.

Mr. Wade said that the new provision did not allow automatic control of someone's property. The imminent domain act would prevent that from happening.

REP. LASZLOFFY asked that Mr. Ritter address the comments made by the Sierra Club.

Russ Ritter said that he believed that Montana Resources had to shut down as a result of deregulation. He said that he believed that Montana Resources supported deregulation. He also indicated that the rise in costs, in his opinion, was not due to deregulation.

REP. RICE asked what was the stand of the AARP.

Ed Eaton, AARP, indicated that the person who could respond had left but the organization was not comfortable with the bill.

REP. SHOCKLEY asked Mr. Wade would object to changing the wording from line 14 (after the word kilovolt), through line 17 to "does not include an electric transmission line extending from an electrical generation facility for which the person planning to construct the line is obtaining right-of-way agreements or options for a right-of-way for more than 75% of the owners who collectively own more than 75% of the property along the centerline as defined in _____."

Mr. Wade said that, with respect to the Roundup project, it would not have an impact.

REP. FUCHS asked about the per capital income prior to the Major Facility Siting Act in the 1970's and what percentage of our revenue came from natural resource production in the state.

REP. OLSON said that a company that he had worked for went from 350 employees to none in 1989.

REP. FUCHS said that he had information provided from the Department of Revenue from 1984. It indicates that 26.8% of Montana's revenue came from natural resource production. This

was 11 years after the MFSA. Currently the state is down to 6.1% of revenue from natural resource production. In 1984 the state was only \$2,000 away from the national per capita income; today the state had fallen almost \$8,000 behind the nation for per capita income.

REP. CARNEY indicated that the committee should consider the cost, in particular, Libby.

CHAIRMAN BITNEY indicated that these issues should be addressed in Executive Action.

Closing by Sponsor:

{Tape: 3; Side: A; Approx. Time Counter: 2.9 - 6.9}

REP. OLSON said that because of the EIS requirements, the Roundup power plant is going to run twin 161 KV lines because the exemptions in the act would not allow them to run a 230 KV line. The 230 KV line would have less impact on the ground than the twin 161 lines. This bill would not weaken the environmental laws.

HEARING ON HB 304

Sponsor: **REP. ALAN OLSON**

Opening Statement by Sponsor:

{Tape: 3; Side: A; Approx. Time Counter: 6.9 - 11.0}

REP. OLSON said that HB 304 is an act clarifying requirements for a coal mine operator to receive a reduction in the severance tax imposed on each ton of coal produced, if the coal is sold to instate electrical generation facilities. This bill is to correct provision of SB 134 from the 2001 session. SB 134 was an act to encourage the use of coal in Montana electrical generation facilities. HB 304 would strike the provision requiring that half of the electricity produced by a Montana electrical generator be sold in the state. It would also clarify the term "agrees to offer". It would change "agrees to offer" to "offers to sell." These changes would make 15-35-103 conform to other electrical generation legislation.

Proponents' Testimony:

{Tape: 3; Side: A; Approx. Time Counter: 11.0 - 17.9}

Jim Mockler, Montana Coal Council, said that he is in support of HB 304. He also asked that there be an amendment to the bill on line 28 to strike the words "and before January 1, 2008." He provided written information outlining the financial projections of coal-fired power plant. Big business also provides for smaller businesses to be created such as is the case in Colstrip. He distributed information on Coal-Fired Power Plant and Mine Development.

EXHIBIT (feh11a04)

Russ Ritter, MRED, said he stands in strong support of HB 304.

Willie Duffield, Montana Association of Oil, Gas, and Coal Counties, said that he also supports the passage of this bill.

Charles Brooks, Billings Area Chamber of Commerce, said that the Chamber believes that an increasing supply of energy in Montana would help to provide a solution to current and future power needs facing the state and country.

Gene Walborn, Department of Revenue, said that they also stand in support of the bill.

Steve Wade, Great Northern Properties, said that he urged the committee approval of this bill with the amendments offered by Mr. Mockler.

Opponents' Testimony:

{Tape: 3; Side: A; Approx. Time Counter: 17.9 - Tape: 3; Side B, 3.9}

Patrick Judge, Montana Environmental Information Center, said that this bill would only benefit those selling power out of state. Montana already produces twice the electricity than consumed in the state. Montana's environmental laws are being systematically dismantled. He said that this bill is in poor form to be giving additional tax breaks for the energy industry in light of Montana's economic state.

Gene Fenderson, Progressive Labor Caucus, said that they are in strong opposition of this bill.

Don Judge, Teamsters Local 190, said that they predict that some of the old generation facilities, such as Colstrip, are going to raise political and legal questions over the ability or inability to pay lower taxes if this bill is passed in it's current form.

They could raise that issue now, under the current law without this bill being passed, if we were to offer lower rates to a newer operating facility just based on the fact that they were proving that revenue to Montana. He asked, "How long do you think Colstrip can operate if they are paying three times the rate of coal severance tax that their nearest competitor is?" Energy deregulation has cost the state a tremendous amount of money. He asked that the committee defeat the bill.

Matthew Leow, Montana PIRG, said that there isn't a fiscal note on this bill, which would be interesting. He indicated that half of the Coal Severance Tax goes into the Coal Severance Trust Fund and half goes into the General Fund. He asked that the committee give the bill a do not pass.

Sherm Janke, Bozeman, Sierra Club, Montana Chapter, said that he fully supports the previous opponents to this bill. He indicated that this was another tax break for big industry. It sets up a double standard. There will be one standard for coal that will be shipped out of state for generation of electrical energy somewhere else; and there will be a different standard for generation facilities in Montana.

Michelle Reinhart, Northern Plains Resource Council, said that the members echo the comments made by previous opponents and urge the committee to give this bill a do not pass recommendation.

Questions from Committee Members and Responses:

{Tape: 3; Side: B; Approx. Time Counter: 3.9 - 7.5}

REP. MATTHEWS asked how long it takes to build a coal generation plant.

REP. OLSON, said that the permitting process alone takes about three years. The actual construction takes approximately another three years.

REP. MATTHEW asked how big the Bull Mountain project was going to be and how it compared to the Colstrip generation facilities.

REP. OLSON said that the Bull Mountain plant would consist of two-380 megawatt units, 350 megawatt of marketable power. This is considerably smaller than Colstrip.

REP. DOWELL asked if there was to be a fiscal note on this bill.

REP. OLSON said that there was not fiscal note because there is no known way to quantify what the fiscal impact would be. There are no impacts to the general fund if there is no project.

REP. DOWELL said that there are many proposed ideas that require fiscal notes because of expected lost or expected gain to the general fund. He then directed the question to Mr. Wahlborn.

Gene Wahlborn, indicated that the bill did not require a fiscal note because they were clarifying the statute, not making a change to the rate of reduction and who would qualify.

Closing by Sponsor:

{Tape: 3; Side: B; Approx. Time Counter: 7.5 - 10}

REP. OLSON said that we ship other resources out of the state also, such as wheat, barley, and our kids. A normal fire season in Montana produces more pollution than the power plants. The revenue lost from the Coal Severance Tax would be far less than if there was no Coal Severance Tax. He asked that the committee give the bill a do pass recommendation.

HOUSE COMMITTEE ON FEDERAL RELATIONS, ENERGY, AND
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ADJOURNMENT

Adjournment: 5:40 P.M.

REP. ROD BITNEY, Chairman

GLENNA MCCLURE, Secretary

RB/GM

EXHIBIT(feh11aad)